

COMMISSIONERS APPROVAL

CHILCOTT *gc*

THOMPSON *AT*

LYONS

PLETTENBERG (Clerk & Recorder)

Date.....March 15, 2007

Members Present.....Commissioner Greg Chilcott,
Commissioner Alan Thompson and Commissioner Howard Lyons

Minutes: Glenda Wiles

The Board met with various members of the Planning Staff and Planning Director Karen Hughes to review County Attorney George Corn's recent memo in regard to his interpretation of density requirement in 1 per 2 Interim Zoning Regulation (Resolution No. 2038). Also present was Civil Counsel Alex Beal who gave a brief recap of George's memo (as attached) and numerous citizens.

Alex stated it is important, when interpreting the statute, to interpret the plain language from the text. If the text is unclear, then it becomes important to dig deeper into the history or previous discussions of the legislators. As this interim zoning was passed by the voters, there were no deliberations so you can not look to the history in order to make any interpretations. The ballot language was not as clear as it could have been but in coming up with an interpretation, it seems while the term density may have a definition within the 'planning community' which means the total size divided by lots; that is not the context in the ballot language. Thus, the most reasonable reading is to say that this is a general density measure that means individual units; lot size of two acres.

Karen Hughes reminded the Commissioners that upon receipt of this memo they had notified the Commissioners they would follow this interpretation. She has provided her staff that information also.

Commissioner Chilcott stated once this interim zoning was passed by the voters, the Commissioners needed some direction. They asked the planners to make a review and interpret the language so they would know how to move forward in regard to reviewing subdivisions. The County Attorney was also asked for their opinion. Planning's opinion was made known quicker than the County Attorney's. Commissioner Chilcott stated some people think Planning was acting on their own, but they were working under the direction of the Commissioners. He stated there has been some criticism of the planning staff and if someone has concerns for their work they should bring those concerns to the

Commissioners. He stated he appreciates their knowledge, professionalism and the manner in which they do their job.

Alex stated the county attorney was to look at voter intent, planning was utilizing planning terms. Therefore the interpretation took much longer.

Public comment was then called for. Commissioner Chilcott asked the audience to be respectful of everyone present and to address the Commissioners, not the large crowd.

Terry Nelson of Applebury Survey stated his main concern is with the county being four months from another election and there are two different interpretations of the 1 per 2. He stated he had asked the previous Civil Counsel about this issue and he was told they 'no clue' as to the interpretation of the ballot language. He stated there was plenty of time to address this when the ballot language became clear. That was not done and now they have an opinion of minimum acreage. The language of the petition never used the word minimum lot size, it used the word density, therefore; the ballot language was misperceived by many voters. The Planning Office asked a series of questions following the election and very slowly the County Attorney gave their opinion. Terry stated there are still numerous questions that need to be asked and answered. He asked when those answers would be given to the community. He stated he is involved in several subdivisions that have proceeded down the 'planning pit' and they have believed this to be based on density not lot size.

Jason Rice Territorial Surveying stated the language clearly said density. An example of this was the recent Grants Meadows Subdivision, where the County Attorney stated we could do half acre lot density. The intent was to preserve open space, how will 2 acre lots protect this open space. Therefore they were misled by the folks who did the initiative or there was some confusion from those people themselves. Jason stated the County Attorney could have deferred this opinion to planning office; and now they have wasted time and tax payer dollars. What about the subdivisions in the process? Density means density.

Carl Boehm stated density means concentration of people and things in relationship to their size. If they did not do the initiative right, then do another ballot issue.

Roger DeHaan stated what we are talking about is the 'tempest in the teapot'. The eye for many voters is the permanent zoning that comes in another year. Roger felt the Commissioners must be consistent and George's opinion is a good one. He suggested they look to the future and put some permanent zoning in place. And if the Commissioners decide to use the cluster concept; to make sure the open space is closed for development.

Jake Kammerer stated everything he has ever read says when the word density is used it means the whole part. By following George Corn's opinion, the Commissioners are promoting rural sprawl and there will be no promotion of open space with 'one for two'.

Jake also noted development needs to be placed close to the infrastructure. Smaller lots should be located there and open space should be out further from town.

Chip Pigman, Developer of the Grants Meadows Subdivision (and Planning Board member) also expressed concern. He stated the recent opinion by George Corn is different than the one he gave in the Grants Meadows Subdivision. He noted there has been no change in personnel since Grants Meadows was done.

Lori Schallenberger stated she was disappointed in George's legal opinion. She has admiration for the planning staff and Karen. She noted her appreciation for their time and education of the public. She felt Karen covered the density issue well. She felt density was the issue on the ballot. Lori read a statement (see attached). She felt this is a stop growth tactic, and common sense has gone out the window.

Kirby Christian a Land Use Attorney (Tom Poindexter and Gary Menster clients); agrees that density is average and not lot size. He disagrees with George but understands the argument. He felt the interpretation should be done narrowly not broadly. He also agreed they should use the opinion of the Grant Meadows Subdivision. He feels that by encouraging clustering, the county would be losing the needed open space. He stated when the county does these types of interpretations, it forces his clients to redesign their development two times and many deadlines are missed.

Tom Hanson of PCI Engineering and a voter for 35 years, stated when he voted he believed this was a density based issue and no where did it address minimum lot size. Two acres are too small and other areas are way too large. He stated density gives them flexibility to make sense of the zoning.

Sara MacMilian the Bitterrooters for Planning Attorney stated the citizens were involved in the draft language. She stated this initiative was for interim zoning due to the emergency situation of the rampant growth. She stated the citizens did a good job of drafting this initiative. It was not drafted by the Planning Staff. Not only did they draft the initiative, but they campaigned for the initiative and voted for it. She stated the language is very clear: one dwelling per two acres. And for the general public it means just that. There is no average. Planning uses the term density but public does not. There has already been litigation trying to keep it from the voters.

Terry Forest of DJ & A Engineers felt density was a specific part of this rule and it has a meaning. He stated people are uptight because regulation change and this costs the developer money. He noted a specific development of 160 acres containing 58 houses. He stated they should be working on an average and some lots will be smaller than 2 acres. He stated this interpretation costs the developers money.

Doug Soren stated he was born in this building and is a voter. He got involved in the initiative project in the fall and his understanding was that he was voting for an emergency zoning plan that would give the Commissioners some breathing room while they developed a comprehensive zoning plan. He stated everyone he talked to felt the

same way. Granted the voters are not as educated as the planners, and they are common ordinary citizens, but the language was clear: 'one house per two acres'. This interpretation is not up to the developers or the Commissioners, so stop beating around the bush. He stated he supports George Corn's opinion as he understood what the voters intentions were. Doug stated the Commissioners should quit talking about it and just get on with it.

Dave Hurtt stated he is a rancher but did some development providing 37 home sites in his area. (See attached comments). He stated he agrees with the first group of folks.

Attorney Curtis Cook stated he was involved in this process all the way through. He stated this interim zoning was not passed by the citizens in order to help developers make a lot of money. Rather it was passed because we are in the process of ruining the county with the wild runaway development. The interim zoning ordinance is an emergency initiative which will give the Commissioners a chance to do zoning and planning. The Planning Board and Commissioners have supported countywide zoning, so he is rather surprised at this meeting. He stated county wide zoning is a lot of work and this will give them the necessary time to do it. There is not average lot size here. One per two has to do with an absolute size of land. This stopped development to save the county from the wild development.

Jack Saunders stated he is a voter. He stated it is clear to him that the initiative provides '1 house per 2 acres'. He agreed this interim zoning would 'hold things' for a year or two while the county moves forward on zoning and planning policy. That is what is being initiated, and the voters should be protected from the rampant development that has been occurring. Jack stated the Commissioners tend to lead toward the realtors and developers. He stated the Commissioners should be protecting the citizens. He asked the Commissioners to reconsider what George Corn has written for the people, and follow the '1 per 2'.

Shawn MacElravy read the statement of implications on the ballot issue. He stated the citizens voted for this. He also noted when a final plat is platted and a person takes title; that minimum size needs to be 2 acres. He expressed concern about the disregard over the interim zoning and repeated attempts to disregard the will of the voters. The initiative did not address density. He advised the Commissioners they are violating the public trust by holding these meetings and attempting to 'ferret out' the meaning. He stated the County Attorney has given the Commissioners specific advice, yet they are wasting time and county resources to further their interest with developers who want the rules bent for them. Shawn reiterated that the Commissioners are destroying public trust. (See attached comments).

Gail Knox of Corvallis stated this is an interim zoning concept which will help the Commissioners and Planning Staff with the necessary time to adopt good zoning practices. She stated the citizens have asked for zoning for a long time, but the Commissioners did not do anything. Now the citizens are 'up to here' with the growth

and something needs to be done. She stated there is a limited time to deal with this and the Commissioners need to get busy.

Stewart Brandborg, represents the Bitterrooters for Planning. Stewart complemented the Commissioners for their meetings in the evening from Darby to Florence. He stated the citizens are saying 'let's move forward with zoning'. He stated these meetings and interpretations are simply an effort by the developers to continue their piece meal development. They want to circumvent the law which is not fair. The citizens worked hard to write the initiative, campaign for it and get it voted in. Stewart stated the message is clear: '1 house for 2 acres'. He stated there was no confusion in the minds of the voting citizens, just a smoke screen now by the developers. He urged the Commissioners not to be derailed by the small group. He noted while two years seems like a long time to get the zoning into place, it will go by quickly. The proposal was to stop big major development and the rampage we are subjected to. He agreed they should move forward on the zoning and meaningful planning.

Doug McClaren stated he has lived here for 40 years. He stated he is sick and tired of certain people who appear to be from certain groups attacking him because he is a realtor. He does not remember when he was ever in anyone's hip pocket. This is slander to attack the realtors who follow the law. The issue of intent has been brought up; if there was no confusion, there would be no meeting today. He felt they should follow the wording and support the density interpretation.

Richard White stated in the Ravalli Republic Newspaper, just before the election there were a number of ads that showed Eastside Highway with cluster development and two acre plots. The question that was being asked was the size of the two acre lots. He stated the voters were not confused, just the attorneys, engineers, developers and realtors.

John Kellogg of PCI Engineering and a resident of Stevensville, stated last fall when the election was coming, he wanted to be informed so he reviewed the text of the initiative in regard to the density. What was unusual about this was that it would apply to new subdivisions. New subdivisions are encouraged to use cluster developments. This is a basic planning principal, and to throw that out the county goes backwards. He also noted the preliminary plat applications allow density for more than one house for two acres. The initiative also addressed the ratio of dwellings to land area.

Kathy Rubick, a new citizen formerly of Littleton Colorado stated Littleton Colorado was beautiful and it was destroyed by development. The word she saw on the ballot was interim which gives the Commissioners times to develop zoning and put a plan in.

Chris Palin stated this initiative has given power to people who are not qualified to make determination on interim zoning. They (the drafters of the initiative) should have visited with the professionals, and she stated it is curious why George is not here today.

Paul Wilson showed pictures of a real project. He stated if they follow the advice of the County Attorney, there will be no park land nor open space. He felt the zoning means

density. With the '1 for 2' interpretation, it will mean piece meal development and poor land use. His suggestion was to not slice and dice the county into two acre parcels, and to take politics out of the county attorney's office.

LaRue Moorehouse of Victor stated she helped work on the wording in the original initiative. They did not do the number of homes; but rather added that per the legal requirement. The intention was to give the Commissioners the one year plus another year's time to handle the county wide zoning. She stated this was an emergency matter and was not intended to be permanent. The Commissioners should have welcomed this as it gives them the necessary time to deal with zoning. The developers claim to be unduly harmed. Good faith means good profits to them.

Pat Tucker thinks there is some disingenuous developers and realtors who did a good job of showing what one house per two houses would be (in their advertising), but we voted for it anyway. She noted they advertised it, and now they say they did not understand it.

Marlin Powell has a parcel of land that has been involved in a 3-year subdivision process. In regard to zoning, he noted Commissioner Thompson commented that 72% of Ravalli County is Forest, 3-5% is in the flood plain; there are four municipalities. When you take those land masses out, there is only 10% left to build on. He has bought parcels and developed land. He can not find a piece of property that meets the criteria. He stated there is no unregulated growth, and there are plenty of regulations. Yes we need to be zoned and Karen defined it quite well. It is a density issue. My family makes a living from this industry.

James Rokosch of Stevensville relayed the initiative was meant as an interim measure. He helped to craft the wording. The group asked the County Attorney for information, and they looked at drafting the initiative at a one hour per 40 acres, but settled on the one for two. They also visited with builders. They we did not want to run any body out of business, so they settled on the one for two which would be less of an impact during the short period of interim zoning. This would give the Commissioners and the Planning Staff adequate time to deal with zoning and include public participation. James stated the Commissioners could have acted on the zoning issue when the growth policy was adopted, but they did not, so the citizens did something by ballot and now we have something. The language is density: one per two, average was not included. It is an absolute term. He agreed clustering has a lot of merit, but felt we needed to get there by zoning.

Kathleen Driscoll stated her concern is that developers say they are demonized. This makes the polarization in the valley even worse. She advised the Commissioner not to fight what the voters want. This is not good to pull apart.

Chuck Stranahan stated this is not about pro or anti growth. He stated he understands what Chip says but people should have seen this coming. He relayed if the Commissioners had been pro-active in obtaining a zoning plan from the growth policy, they would not be having this discussion. The public trust from both sides is not being

served, it is being betrayed. Chuck advised the Commissioners not to go against county counsel. He also advised them they are "in a pickle" when they do not plan ahead.

Richard O'Brien stated the Commissioners need to support this citizen driven ordinance.

Public comment was then closed. Board discussion then took place. Civil Counsel Alex Beal explained George's absence; as George feels his position is clear, and these types of issues are not his only duty as he deals with criminal issues. He stated his office is overloaded and he does not have time to come to this meeting.

Commissioner Thompson appreciates Alex being present, but is disappointed that George did not show up. He stated this is a 'huge mishmash' that disappoints him because the people who were so much for 'doing things for growth' talked about cluster development and leaving open space. He further added a couple of the people who spoke here today were at a meeting in Corvallis and he said he did not like '1 for 2' and they said that is not what the zoning was about. Rather, at the Corvallis meeting they agreed 'five on one parcel'; which would leave open space. Now those same people say 'one on two'. Commissioner Thompson stated he applauds Doug MacLaren's comments here today. Commissioner Thompson further stated that people say the Commissioners do not care about anyone except developers, but he does not 'make a dime on any development'. When he moved to the valley there were less than 19,000 people. He stated he does not like this growth but there are multiple communities and people are coming here and the county needs to plan. He indicated the Commissioners have been involved in five different planning operations since his tenure. George Corn and other attorneys stated we could not do emergency zoning as state law did not allow it. They were being dishonest. Mr. Corn has said the reason he came up with his opinion is that if this (the language for the interim zoning initiative) had been done by planners it could have been different, but it was done by regular people. He stated he is truly disappointed in George Corn. He stated while he does not agree with the vote, it is important to 'get on with the interim zoning'. He stated he would have rather have permanent zoning. Commissioner Thompson continued stating this is frustrating because they have gotten to a place 'that all of the sudden we can't seem to talk to one another in a civil tone. And further, we can not recognize that laws need to be followed. He stated the State of Montana is a pro-development state and the laws have existed for many years'. In Ravalli County it may take 2-3 years before the Commissioners ever look at the proposed subdivision. Anyone can see what conditions are imposed on subdivisions and the Commissioners always 'look to the law' on any decisions. He stated he is disappointed that people are name calling and we are not talking to each other. He is not sure what the citizens thought they were looking for when they voted for this interim zoning. Do they want density or one for two? He stated he had his opinion and it was not what was voted it.

Commissioner Thompson continued to note his disappoint in George, particularly in George's Letter to the Editor. He stated he did not like to be personally chastised, but in particular did not like the chastisement to the Planning Staff as they have done a good job. He stated the Commissioners will send George a letter with their thoughts, and it is up to the Commissioners to either discipline or talk to those who work under them. It is

not George's responsibility to do so. He indicated there are strong opinions on both sides of this issue.

Commissioner Lyons said it was his first time to sit in a room like this and say something. He too likes what Doug McLaren said. The developers and realtors work for land owners. The Commissioners have to respect their ability to carry on what they have to do. At some point people sell land because of their age, or they are closing down their business due to their 401 K etc. And in some cases, the husband and wife own the land and a health problem occurs. He asked has there been wild development? The answer to that is a matter of opinion. He asked if they should have zoning in one or two years. And how do they address everyone's concerns? It would be a miracle if they can. He also asked if zoning would be much different than what our planning department has allowed to happen or what we end up with. He stated he did not think it would be much different. In regard to piece meal development; he stated no. In regard to zoning to protect us from large developments, he stated no.

Commissioner Lyons stated 'some people from out of state' and Professor John Horwich gave the Commissioners talks and Professor Horwich said they are looking at the 'largest amount of people who are retiring and they have more money than our whole county wants'. There will be people that will sell land to them. These things happen in other parts of the country too. If we go at this with open minds and listen to what other people have dealt with and learn from them, we will get through this. If we keep dividing, we'll get nothing done. He stated he is glad the Commissioners had this meeting as maybe this can be a turning point. He stated he does not want to come to these meetings and fight. He also stated he is not ready to decide right now, but the Commissioners know 'what we have to do'.

Commissioner Chilcott discussed revisionist history with the public present in that he wanted to make some corrections to what has been said. In previous years the citizens voted down a comprehensive plan. The Growth Policy involved a number of people and that was approved by the Commissioners. When he ran for office five years ago, he made the mistake of mentioning zoning, and it was not a good thing for his campaign. Now the citizens have come along way in regard to being educated in planning and zoning issues. He stated it is unfortunate the Commissioners have not shared what they have done in the past few years. The Ravalli County Planning Staff are young, educated, and work more than what they get paid to do, and it bothers him when people take shots at them. The Commissioners follow their advice because 'they are the experts'. What we have done, we are proud of, but he is disappointed that we have not shared more of what we have done with the citizens. He stated there has been a lot of growth, and agreed it could have been managed better but he will not take all the responsibility for this as many people rejected zoning. He simply apologizes for not sharing more of what they have done with the citizens. He stated he is not smart or arrogant enough to say what the people were thinking when they voted for the one for two. He only knows what he was thinking when he cast his vote.

Commissioner Chilcott then asked Civil Counsel if, under contract law when the language is vague, it is constituted against the drafter. Alex answered yes. Commissioner Chilcott further stated if he were to make a mistake, he would 'expect to get kicked'. He stated he worked in planning in Alaska under a different set of rules. He felt density was to be a reasonable consideration given to the ratio. He stated he was curious to see 'how many people had their finger in the draft regulations'. Stewart Brandborg stated he, Chuck, the County Attorney and about seven hundred other citizens reviewed the draft language. (That group of seven hundred was groups such as the Bitterrooters for Planning, Citizens against Aspen Springs, Neighborhood Groups etc.)

Commissioner Chilcott stated the Commissioners wish to preserve the intent of the citizens but he questions the fact that lay people drafted this initiative language. He stated the Bitterrooters for Planning must have some basic understanding of planning and density is one of the tenants of planning. To suggest that after the fact that none of the drafters knew what the language meant is hard to believe. Commissioner Chilcott stated he wants to understand what the drafters knew, as the County Attorney stated the drafters did not know.

Stewart stated the '1 house per 2 acres was clear to them because they had quite a bit of discussion on that issue. They looked at the initiative as a 'stop gap measure' which would give the Commissioners the time to zoning. Commissioner Chilcott stated he appreciated this thought as it gives the Commissioners and Planners some 'breathing room'. He reiterated the citizens are lucky to have the planning staff that we have, particularly when they are not paid enough.

Stewart indicated their Attorney, Sarah assisted them in getting the initiative ready for the ballot. Stewart stated George Corn simply indicated the Commissioners could implement interim zoning based on the passage of this initiative. Commissioner Chilcott stated that is not the way he remembers it, and while he does not want to attack anyone, he still wants to know who wrote the initiative so he knows how to react to this whole issue. He stated the common word such as density would have come up in their research, and in regard to open space, one of the themes of the Growth Policy was to promote cluster development. Commissioner Chilcott further indicated the maps that Paul held up shows what we had before '1 for 2'; and looks better than what the interim zoning does. He stated while he wants to follow the will of the voters, it is important to understand how density is used and either way the voters win. Commissioner Chilcott stated the Commissioners need to do more research and attempt to understand what the citizens knew when they were voting.

Commissioner Chilcott also noted the county is facing pending litigation and while it should not have any bearing on the interpretation; the Commissioners need to see how that plays out as it is an element on this issue, because litigation is costly to the citizens.

Commissioner Thompson touched on what they have accomplished in the last five years:

- Highway 93 corridor
- set backs on river

- Mansion area for Area 3
- Corvallis School District about zoning
- Right to Ranch and Farm
- Cell tower ordinance
- Animal protection ordinance
- Growth policy.

Commissioner Thompson stated he would like to continue with George Corn's recommendation and at same time, seek the opinion of the Attorney General and to ask specifically the legality of George's opinion. He stated he hopes this opinion can be expedited.

Commissioner Chilcott stated when the County Attorney opinion came out, both he and Commissioner Thompson were out of town, so this has been the first opportunity for them to talk about this issue in an open forum. He also stated George's opinion is not legally binding, and they do have a public policy decision. Commissioner Chilcott stated he was not sure they should ask for the Attorney General's opinion as it might be nine months out. Alex noted the Attorney General might not even accept their request for an opinion.

Commissioner Chilcott stated he has several pages of information for definitions on ratio; density etc., which brings many questions to mind for the Commissioners.

Alex then responded to some of the public comments. He stated the County Attorney reviewed the ballot language prior to it being placed on the ballot. However, the scope of that County Attorney review is limited; in that he simply makes sure the procedures are met. In terms of density, the density has a lot of modified definitions and it is not fair to say that density has its own meaning. Case law around the country does not give a single answer. In terms of most zoning regulations, they will use two different terms; one might be specific and one might be broad and they might interact. In terms of narrowly interpretation the statutes, this is not true when you deal with interim regulations. Alex further indicated the Supreme Court deals with 'interim' differently than 'permanent'. George is simply stating his opinion on what the drafters were thinking, but in the end, what matters is the intent of the voters as a whole. Alex stated there is no way to know what everyone thinks. However, when the question of definition is asked, an answer has to be given. In terms of contract law, it is appropriate to construct vague terms against the drafters. Some of the subdivision applications that came to the planning office after the approval of the '1 for 2' look differently; so to have any meaning at all, George's interpretation is the only one that makes sense.

Commissioner Chilcott stated he challenges Alex on this interpretation. He felt county wide zoning would make them (the subdivisions) compliant. Alex stated it is not clear when you look at the law. He also stated if people what to say they will not build (on those parcels), that is good, but we can not force them to do it. In terms of permanent zoning on the parcel, he noted they wound up with different legal opinions, which caused the county to 'get sued a hole bunch'. Alex stated regardless if everyone likes this initiative or not, the County Attorney has responded with his legal opinion or decision.

Commissioner Chilcott questioned if this opinion/decision was legally binding on the Commissioners. Alex stated that given the amount of litigation, this question needs to be discussed in another forum.

Commissioner Thompson made a motion to request an Attorney General opinion of George Corn's decision, and while they are waiting for this Attorney General opinion, to abide by George's decision. Commissioner Lyons asked if a time limit could be put on this request. Commissioner Thompson answered they can not make the Attorney General respond, but they can explain the time line and ask for expedited review. Commissioner Lyons did not want to second this motion because he did not want to follow George's opinion/decision while waiting on the Attorney General opinion. This motion died for lack of a second.

Commissioner Lyons then made a motion to continue this meeting. Commissioner Chilcott stated he would entertain a motion that the County Attorney ask for an Attorney General opinion and leave it at that; in other words have George write the request and in the interim, not follow the County Attorney opinion. Commissioner Thompson noted they are following George's opinion now.

Commissioner Lyons restated his motion to simply ask the County Attorney to request an Attorney General opinion. Commissioner Thompson seconded this motion and all voted "aye".

Commissioner Lyons then withdrew his motion to continue the meeting.

Commissioner Thompson then made a motion to continue to follow the County Attorney opinion/decision until they receive an Attorney General opinion. This motion died for lack of a second.

Commissioner Chilcott stated he did not want to lock the county into anything as they need to see what the citizens are going to say when this 'hits the paper'. He stated this type of thing has happened before, and while he is not whining about the three Commissioners versus five; the citizens complained loudly when they realized there was only one reference to the transition from three Commissioners to five buried on page 37 of the Local Government Study Report. Now the word 'density' comes up and some citizens will be complaining about that also. Commissioner Chilcott stated they need to understand this better as it has a great impact on the planning and subdivision process. He stated before he decides to follow George's opinion, he wants to make sure that opinion actually has the force of law over their local policy.

Commissioner Thompson stated the planning department has to follow something immediately. Therefore the county either follows George's opinion or density. We cannot continue this meeting indefinitely. Commissioner Thompson stated he is not comfortable having them put into effect George's opinion for 2-3 weeks then we throw it out and do something else when the Attorney General opinion is rendered. He stated it is up to the Commissioners to give direction to the planning staff.

Commissioner Thompson made a motion to give planning the direction to process applications following George Corn's opinion until they receive a different opinion from the Attorney General. No second to this motion was received. It died for the lack of a second.

Commissioner Lyons made a motion that during the remainder of the interim zoning time Ravalli County recognize the average lot size as 2 acres per house unless the Attorney General says something different. No second to this motion was made. Motion died for lack of a second. Commissioner Chilcott stated he wants to know what authority the County Attorney has in the interpretation first. Commissioner Chilcott then suggested following the County Attorney opinion until the Board makes or decides to follow a different interpretation. After some discussion it was agreed they did not need a motion as they were already following George Corn's interpretation.

The meeting adjourned.



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Ravalli County Planning Dept

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TO: Karen Hughes, Planning Department
CC: Ravalli County Commissioners
FROM: George Corn
DATE: February 28, 2007
RE: Interpretation of "density" requirement in 1 per 2 Interim Zoning Regulation (now Ravalli County Resolution 2038)

My office has researched the language in the Interim Zoning Regulation ("1 per 2 Regulation") passed by the Ravalli County voters on November 7, 2006. Significantly, the Regulation itself is entitled "AN INTERIM ZONING REGULATION LIMITING SUBDIVISIONS TO A DENSITY OF 1 RESIDENCE PER 2 ACRES FOR A PERIOD OF ONE YEAR."

The 1 per 2 Regulation provides that "[no] preliminary plat subdivision applications may be approved that provide for the building of residences at a higher density than one dwelling per two (2) acres." This Regulation was passed pursuant to §76-2-206, MCA, which expressly authorizes the adoption of interim zoning regulations as an emergency measure to promote the public health, safety, and general welfare while long-term zoning regulations are considered. By such adoptions (as evidenced by the ballot language), the voters have stated that they perceive such an emergency measure is necessary to regulate growth in Ravalli County.

In reviewing this matter I note that, by common definition, density means "the amount of something per unit." *American Heritage Dictionary*. General treatises on zoning law state that "[d]ensity...has a broad meaning which embodies all restrictions on the number of persons or buildings permitted in a particular zone." *Zoning and Land Use Controls*, Patrick J. Rohan, 1977, §42.01. To professional planners, lot size restrictions are identified as a specific form of "density control." *Id.* §3.01; see also definition of "density control" in "A Glossary of Zoning, Development, and Planning Terms" published by the American Planning Association. "Density zoning," which is often used synonymously with "cluster zoning," is a more specific term used by professionals when zoning establishes an average residential density over an entire parcel with no restrictions on lot size. *Id.*; see also *Black's Law Dictionary*. The Ravalli County Planning Office opines that in the parlance of professional planners, "density" is often used to indicate overall or average density within a zoning district, while "minimum lot size" is used to describe specific lot sizes within subdivisions.

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In my review I have also considered that zoning regulations, including those establishing a minimum lot size, are presumed valid and are to be strictly construed and "given a fair and reasonable interpretation with some regard given to the proposed use." The drafters of the 1 per 2 Regulation, who circulated the same to the voters, have clearly stated that they intended a minimum lot size be applied to prevent subdivision into smaller lots while long-term zoning was considered. It must be kept in mind that this Regulation was not drafted by planning department professionals, but by citizen advocates during an initiative process addressing an emergency situation. Further, they campaigned for the measure and it was voted on by the Ravalli County electorate in response to that campaign. It is reasonable to assume these voters would be influenced by the campaign preceding the election and understand the terms used according to their common meaning. (On this point, it is significant that voters passed other measures in response to the County's rapid growth, including an open space bond and several measures that significantly restructured the office of county commissioners.)

Thus, to properly construe the language in the 1 per 2 Regulation passed by the voters, the terms must be interpreted according to their plain meaning if such an interpretation is possible. This interpretation should also give as full an effect to its meaning as possible with regard to the proposed use of addressing an emergency situation of unchecked subdivision development in Ravalli County. These principles of statutory construction are designed to "give effect to the legislative will, to avoid an absurd result, to view the statute as part of a whole statutory scheme and to forward the purpose of that scheme." *Orr v. State*, 2004 MT 354, 324 Mont. 391, 106 P.3d 100 ¶ 25. We should "avoid statutory construction that leads to absurd results if a reasonable construction will avoid it." *Gregg v. Whitefish City Council*, 2004 MT 262, 323 Mont. 109, 99 P.3d 151 ¶ 38.

When Ravalli County electors voted to pass the 1 per 2 Regulation this past November, they voted "[f]or adopting an interim zoning regulation limiting subdivisions to a density of 1 residence per 2 acres." Using the general definitions of these terms, the plain language indicates that the voters adopted a general density control measure that limits the size of subdivision lots to 1 residence per 2 acres. Such an interpretation agrees with the common definition of density, as well as the general planning definition of density that embodies all restrictions on the number of persons or buildings permitted in a particular zone. This interpretation also gives full effect to both the language regarding density and the language specifying 1 dwelling per 2 acres size.

To interpret, as some have suggested, the term "density" to establish "density zoning" without further qualification language such as "overall," "maximum," or "average" would be to insert terms that are not included in the express wording of the Regulation itself. Further, to interpret the Regulation as establishing overall or average density would make the "1 per 2 acre" restriction effectively meaningless. As has already started to occur, developers will merely re-

Karen Hughes
February 28, 2007
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write their proposals to eliminate various lots (or phases) of their initial project, then reapply to divide into smaller lots after the interim regulation has expired. Effectively, subdivision into lots smaller than 2 acres would be allowed to continue even while the interim zoning is in effect, negating the stated purpose of addressing an emergency situation.

It is important to note that the distinction between density and minimum lot size would be arguably less significant with permanent zoning regulations. The sort of chicanery that we are beginning to see would be impossible, or at the very least impracticable, under a permanent regulation. There would be no incentive to create large, open space lots to subdivide later because the zoning regulation would not be expected to change. In fact, the temporary nature of this Regulation (and the relatively rural nature of Ravalli County) makes interpretation of a minimum lot size even more important to give full effect to the stated purpose of temporarily addressing an emergency situation while long-term zoning is considered.

It must be assumed that the voters understood the plain meaning of the terms and meant to control subdivision density by restricting residences to 1 per 2 acres (that is, establishing a temporary minimum lot size). This interpretation gives effect to the plain language and the stated purpose of the 1 per 2 Regulation. Any claimed infringement on individual property rights will be temporary and is again authorized specifically by §76-2-206, MCA, which allows for adoption of an interim zoning regulation in an emergency situation. *See, e.g., Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 341-342 (2002) (upholding statutes allowing interim zoning regulations for specific periods of time to prevent destruction of finite natural resources).

Our ultimate goal should be to enforce the honest and fair expression from the voters on the issue submitted to them. The interpretation of the 1 per 2 Regulation which establishes a density control of 2 acre minimum lot size is the only logical and reasonable meaning under the relevant statutes that will make the Regulation effective. Any other interpretation would frustrate the voters' intent and the stated purpose of the interim zoning statute in protecting public health, welfare and safety while permanent zoning is considered. Therefore, it is my opinion that the 1 per 2 Regulation establishes a temporary minimum lot size of 1 residence per 2 acres and should be strictly enforced accordingly.

March 15, 2007

To: Ravalli County Commissioners

I want to express my appreciation for you allowing us to have this meeting and I do appreciate all of the hard work and dedication that all of you have on your jobs and volunteer work.

I am writing to state that I support Karen Hughes and her staff and their interpretation of the law. I think you if study the definition of density she makes a very valid point. I've heard the argument that the original people who wrote the ordinance are interpreting it different and that was not their intent. It clearly states density and does not provide a minimum lot size. If that was their intent it should have been stated. I do not believe the voters were informed. I've talked to many people and they did not understand it. I did not ever hear anything about minimum lot size, even from the people proposing this ordinance.

I have been told that this was not a way to stop growth, to just put on hold the issues of density until proper planning could be discussed and proposed. To interpret this different tells me that it is a stop growth tactic. We all care about the environment and sometimes certain configurations do not comply, what is the difference if it averages 2 acres. You will have the same number of lots. There might be a farmhouse with outbuildings and corrals and it might make sense to have 3-5 acres and allow a few animals and in other places maybe it is just a home site on gravel and no chance of pasture. I think sometimes common sense goes out the window.

In closing I feel we need to show respect to those who lead us. We may not agree on their interpretation but I did not go to college to study planning and devote my career to this endeavor. We have many people in the Planning Office who have done just that in order to seek after knowledge and understanding. I can certainly disagree but I can show respect and kindness.

I would appreciate your consideration in this matter, as I feel we have went way too far in interpreting the term density and mixing it up with minimum lots size as it was proposed to the voters.

Thank you,
Lori Schallenberger
20 Lost Lamb Lane
Hamilton, MT 59840



15 March 2007

**Ravalli County Commissioners
Interim Zoning Public Meeting**

Re: Comments

Greetings,

I have been a rancher and land owner in the Florence area for over 43 years. During that time period, I have had to liquidate some of that land to pay for medical and final expenses for a family member.

Although not a developer, within the last 18 years, I have provided 37 home sites on 78 acres of the original ranch land, which had only been marginal in agricultural production. This was also done for financial reasons, and not out of desire for profit, or to reduce the size of the ranch property.

I complied with the one acre minimum subdivision regulations and feel that the Bullrun and Maverick subdivisions are well designed and well maintained and are an asset to the community.

I am aware of other subdivisions within Ravalli county, which also have been professionally engineered, designed and developed to enhance their communities. The two developments done by Dick Martin in Florence are a prime example. There are two more projects, just a mile south of Florence being nicely developed on one acre sites. Pigman Builders continues to do outstanding design and construction work in the Hamilton area with Stone Gate, Wild Flower and the Arbors.

All on less than two acres per lot size.

Simple mathematics shows that 100 homes on two acre lots equals 200 acres. Common sense shows that 100 homes on one acre lots leaves the other 100 acres as open space.

Common sense also questions what is to become of that additional acre the homeowner is required to purchase. It is too small for any agricultural venture and too large for most people to want to maintain in lawn. Some might opt to have a couple of horses, and that would create a dustbowl and air pollution. Some might let it go to weeds. Some might want to keep it green through irrigation, leading to additional strain on underground water resources.

Cost of housing continues to rise, and requiring a potential resident of the valley to purchase two acres, rather than just a single acre for a dwelling, will increase those costs several thousands of dollars, for land not needed or wanted.


This interim zoning measure is an attempt to slow and control growth. It is being promoted by those who have only small land holdings, and those that are not involved in agriculture.

It is unfair to those landholders that, for various reasons, wish to liquidate some of their assets, which in this case, is land.

It is unfair to those potential residents, who want to live in the Bitterroot, but would be required to spend additional funds for land they do not need.

I am for individual property rights, and am opposed to any group or regulation that limits my rights within my property, and am therefore opposed to the 2 acre minimum lot size. The State of Montana requires only one acre to comply with their sanitary regulations, and I am in agreement with that condition, and have met those conditions satisfactorily in the small developments done with my ranch property in past years.

Sincerely,


David S. Hurtt
5908 Eastside Highway
Florence, Mt. 59833

Date: March 15th, 2007
To: Ravalli County Commissioners
From: Shaen McElravy M.S.W., L.A.C.
4721 Teddy Bear Ln
Stevensville, MT 59870
Re: 1-2 Zoning

Dear Commissioners,

I am concerned about the repeated disregard of the emergency interim zoning called 1 per 2. It appears that there have been repeated attempts to thwart the will of the voters. They voted last November to limit subdivision to one house per 2 acres. There was not any language about average density. Giving an approval to the latest subdivision request is in direct conflict with the public trust. The public trusted you to uphold their request and laws.

Now you are holding public meetings to further ferret out the interpretations of the 1 per 2 zoning. You are continuing to do so, even though George Corn your County Attorney has given you specific advice that the final plat needs to be 2 acres minimum.

It appears that you are continuing to waste the public's time and County resources to further your interests with the developers in this county who want the rules bent for them. These actions continue to destroy any public trust you may have had with them. The current Oligarchy form of government needs to change now and that is why the voters voted for additional commissioners.

If you wish to rebuild any public trust, I ask you to pass a referendum extending the 1 per 2 an additional year. I would like to see the referendum completed by April 1st 2007. The County Planning Department has already informed your office and the public that it will take them 18-20 months to complete the zoning process. It is within your power to extend it now.

I do not want to see what happened last fall when the new subdivision regulations were to go into affect by October 1st and they were not. I remember the minutes from May 2006 when commissioner Chilcott and Thompson stated that completing the subdivision regulations were a priority and it did not happen.

I have serious concerns that the commissioners' lack of action last year has made the county and its citizens more liable for pending lawsuits from the developers. Let's not make the same mistake twice.

Shaen McElravy



Glenda Wiles

From: Chris Rosenau [crosenau@rkymtn.net]
Sent: Wednesday, March 14, 2007 9:11 PM
To: Glenda Wiles
Subject: 1 per 2 interim zoning

Dear Commissioners,

Because we are unable to attend tomorrow's meeting at 3 p.m. in Hamilton, we are sending this email in hopes our opinion will count. As regards the interim zoning measure the voters passed as an emergency measure to slow the explosive growth in Ravalli County, County Attorney George Corn correctly defined what we as proponents of the measure assumed when we voted -- That being that one home cannot be built on less than two acres, period. Our ultimate goal is that the permanent zoning would be no less than ten-acre minimums in our Lone Rock District, and we will be involved in the process with our local area to that end.

Thank you,
Chris and Mitch Rosenau
4775 Chokecherry Ln
Stevensville

3/15/2007

Howard Lyons

From: psi@montana.com
Sent: Thursday, March 15, 2007 2:12 PM
To: Howard Lyons
Cc: gchilcotte@ravallilcounty.mt.gov
Subject: 2 for 1 opinion

Gentlemen,

I wanted to say my piece on the interpretation of the 2 for 1 density issue you are meeting on today. I feel the word density used in the ballot statement on the very first line meant "density". I also feel where it was used twice under the "statement of implication" on the petition where you check the boxes, also meant density. This is repeated again in the petition in another spot. I read Mr. Corns views and I disagree with it. If it walks like a duck and it quacks like a duck and is "named a duck" I feel it is a duck! So I don't need all the explanation of intent. I feel whoever drafted and approved the petition meant it to be density that is why the word is used repeatedly and why the voters saw it as such. Sincerely Bob Pauley